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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,993	09/12/2003	Peter H. Markusch	PO-7931/MD-01-103	9336
157	7590	03/17/2005	EXAMINER	
BAYER MATERIAL SCIENCE LLC			BISSETT, MELANIE D	
100 BAYER ROAD			ART UNIT	
PITTSBURGH, PA 15205			PAPER NUMBER	
			1711	

DATE MAILED: 03/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/661,993

Applicant(s)

MARKUSCH ET AL.

Examiner

Melanie D. Bissett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9/03; 1/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 5 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. The terms "thicker" and "more sponge-like" in claims 5 and 12 are relative terms which render the claim indefinite. The terms are not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Neither the claims nor the specification give guidance to determine what the geotextiles are thicker than or more sponge-like than. What are the geotextiles thicker or more sponge-like than? Also, the term "sponge-like" itself renders the claims indefinite since it is unclear to what sponge properties the term refers. Does the term reference the foam-like qualities or chemical structure? Elasticity? Porosity?

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Grögler et al. (US 4,483,974). The reference can be found on the applicant's Form PTO-1449.

6. The reference teaches coatings of stabilized polyisocyanate particles suspended in polyols or polyamino compounds (abstract; col. 7 lines 15-27). The coatings are applied to woven or knitted textile substrates by knife coating (col. 24 lines 14-21), which would substantially impregnate the fabrics. Note that the coatings of the invention are the same as those employed by the applicant, where the applicant shows coating the compositions onto fabrics by paint rolling. Since the same coatings are used to be applied to fabric substrates, it is the examiner's position that the fabric/polyurethane composites of Grögler's invention would inherently possess the applicant's claimed elongation, tensile strength, and water absorption properties.

7. Regarding claim 2, it is the examiner's position that the coated fabrics of Grögler's invention would be structurally indistinguishable from those claimed and thus would be capable of use as a liner for irrigation canals and ditches. Regarding claim 5, it is the examiner's position that, by the broadest interpretation of the claim, the coated fabrics of Grögler's invention would anticipate the limitations since they would inherently possess a degree of thickness and elasticity.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 6-12 and 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Payne in view of Grögler et al. Payne (US 5,639,331) can be found on the applicant's Form PTO-1449.

10. Payne discloses a process of forming a continuous structure by preselecting a liquid reactive resin forming material, a particulate, and a porous blanket material and applying the resin material onto the blanket such that the resin passes through the blanket (abstract; figure 3). Suitable porous blanket materials include woven, knit, and non-woven materials (col. 6 lines 42-48), and suitable resin materials include thermosetting polyurethanes (col. 6 lines 11-22). The blanket materials are applied to ditches to conform to the surface (figures 5-7). However, the reference is silent on the specific polyurethane compositions used.

11. Grögler applies as above, teaching solidifiable coatings of stabilized polyisocyanate particles suspended in polyols or polyamino compounds (abstract; col. 7 lines 15-27). The coatings are applied to woven or knitted textile substrates by knife coating (col. 24 lines 14-21), which would substantially impregnate the fabrics. Since the same coatings are used to be applied to fabric substrates, it is the examiner's position that the fabric/polyurethane composites of Grögler's invention would possess the applicant's claimed elongation, tensile strength, and water absorption properties. The one-component coatings have a high storage stability and are cured quickly after conforming to a surface by heating to a specified temperature (col. 23 lines 7-64). It is the examiner's position that it would have been prima facie obvious to use Grögler's

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thermosetting polyurethane compositions in Payne's process to produce ditch liners from a one-component, storage stable composition to form liners which cure quickly in the environment and to alleviate problems associated with mixing reactive components during application.

12. Regarding the coating weight and thickness of the composites, Payne teaches that a uniform thickness is to be predetermined, where the resin amount and blanket thickness determine the overall thickness of the composite (col. 4 lines 43-48). The variation of thickness and resin amount would balance processing cost with durability. Thus, it is the examiner's position that it would have been prima facie obvious to form the ditch liners using any coating weight and thickness necessary to optimize cost and durability properties.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie D. Bissett whose telephone number is (571) 272-1068. The examiner can normally be reached on M-F 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (571) 272-1078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Melanie D. Bissett
Patent Examiner
Art Unit 1711

mdb